

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-00-294

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF CHICAGO TITLE INSURANCE COMPANY,

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Chicago Title Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report, dated December 6, 1999, (the "Report") relevant examiner work papers, and any written submissions or rebuttals. The Commissioner enters findings of fact, conclusions and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was a corporation licensed by the Division and authorized to conduct the business of title insurance, as defined by § 10-11-102(3), C.R.S.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on or about December 6, 1999, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 1998, to December 31, 1998.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report. In addition, the Division held meetings with Respondent to discuss and consider Respondent's rebuttals and to explain numerous issues regarding the examination and compliance with Colorado law.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Order, the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Failure to maintain minimum standards in a record of written complaints. Respondent shall provide evidence that it has amended its complaint register to include the omitted information and that the Respondent's complaint register is in compliance with the minimum requirements of the Colorado regulation.
10. Issue B concerns the following violation: Failure to provide written notification to prospective insureds of the Respondent's general requirements for the deletion of exceptions or exclusion to coverage related to unfiled mechanic's or materialman's liens and/or the availability of mandatory GAP coverage. The recommendations in the Report are amended as follows:
 - a. Respondent shall amend its underwriting guidelines and other relevant procedures to comply with Division regulation 3-5-1, VII, L concerning the notification requirements for mechanics and materialman's liens and GAP coverage.
 - b. The Respondent shall perform an audit of all claims denied based, in whole or in part, upon intervening matters occurring during the GAP period, and/or denied based upon the mechanics lien exception. The period of the audit shall be January 1, 1998, until the date of this Order or until the date upon which Respondent can demonstrate compliance with subparagraph (a), above, whichever occurs earlier. The Respondent shall accept liability on all claims identified by the audit and refund amounts owed to insureds.

The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

11. Issue C concerns the following violation: Misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements. The recommendations in Issue C of the Report are amended as follows: Respondent shall demonstrate to the Division that it has amended its procedures so that each policy issued clearly evidences a complete contract.
12. Issue D concerns the following violation: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers. Issue D of the Report is amended as follows: The Commissioner concludes that title companies, possibly on an industry-wide basis, incorrectly concluded under prior law that title agencies were not permitted to file closing and settlement fees with the Division. The Commissioner notes that Respondent is an underwriter/insurer and approximately 60% of its title premium is from direct operations.

Under prior law, title agencies were, in fact, permitted to file closing and settlement fees and other evidence of compliance with closing and settlement requirements with the Division. The Division's position on underwriter/insurer responsibility regarding closing and settlement requirements is as follows: Where the title agency maintains the schedule of closing and settlement fees, and the underwriter/insurer does not perform the closing and settlement services, the agency, not the underwriter/insurer is responsible for compliance regarding closing and settlement requirements. Where the underwriter/insurer maintains a direct operation, i.e., performs its own closing services, the underwriter/insurer is responsible for compliance with closing and settlement requirements.

Accordingly, Respondent shall amend its procedures to ensure that it obtains written closing instructions from all necessary parties for its direct operations and where it files or maintains closing and settlement fee schedules on behalf of its agents.

13. Issue E concerns the following violation: Failure to follow Respondent's own underwriting procedures and/or guidelines. Respondent shall provide evidence demonstrating that it has either amended its underwriting rules to comport with its practices or provide the Division with information demonstrating it has implemented procedures which will assure that all title policies issued by the Respondent will be issued in compliance with written underwriting rules, procedures and/or standards.
14. Issue F concerns the following violation: Issuing title insurance policies without obtaining a certificate of taxes due. Respondent shall provide evidence demonstrating that the Respondent has adopted and implemented procedures which

will assure that, whenever the Respondent issues a title policy in Colorado, the Respondent or its agent will obtain a certificate of taxes due or other equivalent documentation for the subject property of which title is to be insured.

15. Issue G concerns the following violation: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify premium rates. Respondent shall provide the Rates and Forms section of the Division with adequate financial and statistical data of past and prospective loss and expense experience to justify the cited premium rates and closing and settlement fees and charges. The filing shall specifically identify and explain how a reasonable profit provision is incorporated into the development of the Respondent's premium rates and closing and settlement fees and charges.
16. Issue H concerns the following violation: Respondent's use of rates and/or rating rules not on file with the Division and/or misapplication of filed rates. The Commissioner amends the recommendations in the Report as follows:
 - a. Respondent shall review its procedures related to the filing of rates.

- b. Respondent shall initiate measures, including: 1) in-service training and education of all employees, 2) exploration of existing technology to automate its rate and fee computation process, and 3) refining and simplifying current rate and fee structures, to address, at a minimum, the rating of policies and their applicable endorsements, and utilization of filed charges for fees for services, including closing and settlement services.
 - c. Respondent shall utilize rates in connection with the issuance of a title policy which accurately reflect the rates on file with the Division, and shall utilize fees and charges, including closing and settlement fees concerning direct operations, which accurately reflect those maintained by Respondent pursuant to SB 00-106.
 - d. With respect to closing and settlement costs, Respondent shall comply with Division regulation 3-5-1, § V, except as otherwise required by SB 00-106.
 - e. Respondent shall conduct an audit of rate, premium, charge and fee calculations for calendar year 2001. Respondent may employ an independent auditing firm to conduct the audit. This audit shall consist of an examination of 100 randomly-selected files regarding policies and commitments quoted and written during the calendar year, along with any related closing and settlement services provided. Respondent shall prepare a written report summarizing the audit. Relevant officers of the Respondent or the independent auditing firm shall certify that they have reviewed all elements of the audit. Respondent shall submit the audit reports to the Division no later than March 31, 2002.
 - 1) If the audit reveals an error ratio in excess of 5%, Respondent shall continue to perform annual audits and submit the reports in the manner described in subparagraph (e) above until Respondent can demonstrate compliance to the satisfaction of the Division.
 - 2) An error occurs when Respondent fails to use the rates, fees or charges on file with the Division or maintained pursuant to SB 00-106 whether the rates, fees or charges are in excess of or less than the filed rates or maintained schedule of fees.
 - 3) "Error ratio" is the number of files in which a material error is made, divided by the total number of audited files.
 - 4) "Material error" means an error of ten dollars (\$10) or more.
17. Issue I concerns the following violation: Failing to file a schedule of fees and charges for closing and settlement services with the Division and/or using closing and settlement service fees and charges not on file with the Division. The Commissioner amends the Report as follows: The Commissioner concludes that title companies,

possibly on an industry-wide basis, incorrectly concluded under prior law that title agencies are not permitted to file closing and settlement fees with the Division. The Commissioner notes that Respondent is an underwriter/insurer and approximately 60% of its title premium is from direct operations.

Under prior law, title agencies were, in fact, permitted to file closing and settlement fees and other evidence of compliance with closing and settlement requirements with the Division. The Division's position on underwriter/insurer responsibility regarding closing and settlement requirements is that where the title agency files the closing and settlement fees, and the underwriter/insurer does not perform the closing and settlement services, the agency, not the underwriter/insurer is responsible for compliance regarding closing and settlement requirements. Where the underwriter/insurer maintains a direct operation, i.e., performs its own closing services without an agency, the underwriter/insurer is responsible for compliance with closing and settlement requirements.

Accordingly, Respondent shall amend its procedures to ensure that it maintains a schedule of closing and settlement fees for its direct operations pursuant to SB 00-106, and that it uses these schedules when conducting closing and settlement services.

18. The Commissioner amends Issue J to read as follows: Issue J concerns the following violation: Failing to adhere to Respondent's schedule of closing and settlement service fees and expenses. This issue is addressed by the corrective actions ordered regarding Issues H and I, above.
19. Issue K concerns the following violation: Respondent's failure to implement reasonable standards for the prompt investigation of claims. The Commissioner amends the recommendations contained in the Report as follows: Respondent shall provide evidence that it has reviewed all rules, manuals and procedures relating to the investigation and handling of claims and that it has adopted reasonable procedures to assure the Division that all claims will be acknowledged, handled, adjusted, and/or investigated in accordance with Colorado insurance laws, including when Respondent delegates these functions to a third party.
20. Issue L concerns the following violation: Respondent's failure to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. Respondent shall provide evidence that it has reviewed its procedures regarding the prompt, fair and equitable settlement of claims and has implemented procedures which will assure future compliance with Colorado insurance laws.
21. Issue M concerns the following violation: Respondent's failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under

insurance policies. The Commissioner amends the recommendations contained in the Report as follows: Respondent shall review and amend its procedures and those of its authorized agents relating to the handling of claims to ensure that all claims arising under insurance policies, whether received by authorized agents or directly by the Respondent, will be acknowledged and acted upon in accordance with statutory requirements.

22. Issue N concerns the following violation: Respondent's failure to produce and/or maintain adequate records for market conduct review and/or failure to implement claims handling procedures. Respondent shall provide evidence demonstrating it has reviewed its procedures pertaining to record maintenance in the context of claims handling. Respondent shall demonstrate it has amended its claims manual and implemented procedures which will assure claim files will be maintained properly.
23. Issue O concerns the following violation: Making claims payments to insureds or beneficiaries without including a statement setting forth the coverage under which the payment is being made. The Respondent shall demonstrate that it has reviewed its procedures pertaining to the payment of claims and has implemented procedures which will assure future compliance with the requirements of the statute.
24. Issue P concerns the following violation: Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Respondent rates. Respondent shall amend its procedures to ensure filing of the Colorado Uniform Financial Reporting Plan and/or submit an annual filing of sufficient financial data to justify Respondent's rates with the Rates and Forms section of the Division.
25. Issue Q concerns the following violation: Failing to respond to Market Conduct Examination Comment Forms within the prescribed regulatory time period and/or failing to respond to Market Conduct inquiries. Respondent shall provide evidence that it has reviewed its internal procedures regarding monitoring and responding to Colorado Market Conduct inquiries and has implemented procedures which will facilitate prompt responses to all inquiries from the Division and/or its duly appointed representatives and which will assure future compliance with the timely response requirements of 3 CCR 702-6 (6-2-2).
26. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of nineteen thousand two hundred fifty dollars and no/100 dollars (\$19,250.00) for the cited violations of Colorado law.
27. All requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any

rate and form filings shall be provided to both the rate and forms section and the market conduct section. All audit reports must be received within ninety (90) days of the Order, with a summary of the findings, including all monetary payments to covered persons, unless a different time frame is specifically noted in the Order.

28. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
29. Copies of the examination, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final Report dated December 6, 1999, are hereby adopted as may be modified by this Order, and are filed and made an official record of this office. The above Order is hereby approved this 25th day of August, 2000.

A handwritten signature in black ink, appearing to read "Kirven" followed by a stylized circular flourish.

William J. Kirven III
Commissioner of Insurance